ENROLLED

HOUSE BILL No. 730

(By Mr. Myles)

PASSED March 9, 1972

In Effect from Passage

FILED IN THE OFFICE
JOHN D. ROCKERFELLER, IV
SECRETARY OF STATE
THIS DATE 3-29-72
AN ACT to amend and reenact section thirty-one, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to uninsured motorist insurance coverage.

Be it enacted by the Legislature of West Virginia:

That section thirty-one, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy to include an omnibus clause and uninsured motorist coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, shall be issued or delivered in this state to the owner of such vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle for which a certificate of title has been issued by the department of motor vehicles of this state, unless it shall contain a provision insuring the named insured and any other person, except a bailee for hire and any persons specifically excluded by any restrictive endorsement attached to the policy, repon-
sible for the use of or using the motor vehicle with the
consent, expressed or implied, of the named insured or
his spouse against liability for death or bodily injury
sustained, or loss or damage occasioned within the cov-
erage of the policy or contract as a result of negligence
in the operation or use of such vehicle by the named in-
sured or by such person: Provided, That in any such
automobile liability insurance policy or contract, or en-
dorsement thereto, if coverage resulting from the use of
a nonowned automobile is conditioned upon the consent
of the owner of such motor vehicle, the word "owner"
shall be construed to include the custodian of such non-
owned motor vehicles.

(b) Nor shall any such policy or contract be so issued
or delivered unless it shall contain an endorsement or
provisions undertaking to pay the insured all sums which
he shall be legally entitled to recover as damages from
the owner or operator of an uninsured motor vehicle,
within limits which shall be no less than the require-
ments of section two, article four, chapter seventeen-d
of the code of West Virginia, as amended from time
to time: Provided, That such endorsement or pro-
visions may exclude the first three hundred dollars of
property damage resulting from the negligence of an un-
insured motorist.

(c) As used in this section, the term "bodily injury"
shall include death resulting therefrom, and the term
"named insured" shall mean the person named as such
in the declarations of the policy or contract and shall
also include such person's spouse if a resident of the same
household, and the term "insured" shall mean the named
insured and, while resident of the same household, the
spouse of any such named insured, and relatives of either,
while in a motor vehicle or otherwise, and any person, ex-
cept a bailee for hire, who uses, with the consent,
expressed or implied, of the named insured, the motor
vehicle to which the policy applies or the personal rep-
resentative of any of the above; and the term "unin-
insured motor vehicle" shall mean a motor vehicle as to
which there is no (i) bodily injury liability insurance
and property damage liability insurance both in the
amounts specified by section two, article four, chapter seventeen-d, as amended from time to time, or (ii) there is such insurance, but the insurance company writing the same denies coverage thereunder, or (iii) there is no certificate of self insurance issued in accordance with the provision of section two, article six, chapter seventeen-d of the code of West Virginia. A motor vehicle shall be deemed to be uninsured if the owner or operator thereof be unknown: Provided, That recovery under the endorsement or provisions shall be subject to the conditions hereinafter set forth.

(d) Any insured intending to rely on the coverage required by subsection (b) of this section shall, if any action be instituted against the owner or operator of an uninsured motor vehicle, cause a copy of the summons and a copy of the complaint to be served upon the insurance company issuing the policy, in the manner prescribed by law, as though such insurance company were a named party defendant; such company shall thereafter have the right to file pleadings and to take other action allowable by law in the name of the owner, or operator, or both, of the uninsured motor vehicle or in its own name. Nothing in this subsection shall prevent such owner or operator from employing counsel of its own choice and taking any action in his own interest in connection with such proceeding.

(e) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured be unknown, the insured, or someone in his behalf, in order for the insured to recover under the uninsured motorist endorsement or provision, shall:

(i) Within twenty-four hours after the insured discover, and being physically able to report the occurrence of such accident, the insured, or someone in his behalf, shall report the accident to a police, peace or judicial officer, or to the commissioner of motor vehicles, unless the accident shall already have been investigated by a police officer; and

(ii) Notify the insurance company, within sixty days after such accident, that the insured or his legal representative has a cause or causes of action arising out of
such accident for damages against a person or persons
whose identity is unknown and setting forth the facts
in support thereof; and, upon written request of the in-
surance company communicated to the insured not later
than five days after receipt of such statement, shall
make available for inspection the motor vehicle which
the insured was occupying at the time of the accident;
and
(iii) Upon trial establish that the motor vehicle,
which caused the bodily injury or property damage,
whose operator is unknown, was a “hit and run” motor
vehicle, meaning a motor vehicle which causes damage
to the property of the insured arising out of physical
contact of such motor vehicle therewith, or which causes
bodily injury to the insured arising out of physical con-
tact of such motor vehicle with the insured or with a
motor vehicle which the insured was occupying at the
time of the accident. If the owner or operator of any
motor vehicle causing bodily injury or property damage
be unknown, an action may be instituted against the un-
known defendant as “John Doe,” in the county in which
the accident took place or in any other county in which
such action would be proper under the provisions of ar-
ticle one, chapter fifty-six of this code; service of pro-
cess may be made by delivery of a copy of the complaint
and summons or other pleadings to the clerk of the court
in which the action is brought, and service upon the in-
surance company issuing the policy shall be made as
prescribed by law as though such insurance company
were a party defendant. The insurance company shall
have the right to file pleadings and take other action
allowable by law in the name of John Doe.
(f) An insurer paying a claim under the endorsement
or provisions required by subsection (b) of this section
shall be subrogated to the rights of the insured to whom
such claim was paid against the person causing such
injury, death or damage to the extent that payment was
made. The bringing of an action against the unknown
owner or operator as John Doe or the conclusion of such
an action shall not constitute a bar to the insured, if the
identity of the owner or operator who caused the injury or damages complained of, becomes known, from bringing an action against the owner or operator theretofore proceeded against as John Doe. Any recovery against such owner or operator shall be paid to the insurance company to the extent that such insurance company shall have paid the insured in the action brought against such owner or operator as John Doe, except that such insurance company shall pay its proportionate part of any reasonable costs and expenses incurred in connection therewith, including reasonable attorney's fees. Nothing in an endorsement or provision made under this subsection, nor any other provision of law, shall operate to prevent the joining, in an action against John Doe, of the owner or operator of the motor vehicle causing injury as a party defendant, and such joinder is hereby specifically authorized.

(g) No such endorsement or provisions shall contain any provision requiring arbitration of any claim arising under any such endorsement or provision, nor may anything be required of the insured except the establishment of legal liability, nor shall the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.

(h) The provisions of subsections (a) and (b) of this section shall not apply to any policy of insurance to the extent that it covers the liability of an employer to his employees under any workmen's compensation law.

(i) The commissioner of insurance shall formulate and require the use of standard policy provisions for the insurance required by this section, but use of such standard policy provisions may be waived by the commissioner in the circumstances set forth in section ten of this article.

(j) A motor vehicle shall be deemed to be uninsured within the meaning of this section, if there has been a valid bodily injury or property damage liability policy issued upon such vehicle, but which policy is uncollectible in whole or in part, by reason of the insurance company issuing such policy upon such vehicle being insolvent or
having been placed in receivership. The right of sub-
rogation granted insurers under the provisions of sub-
section (f) of this section shall not apply as against any
person or persons who is or becomes an uninsured mo-
torist for the reasons set forth in this subsection.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originated in the House.
Takes effect from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 27th day of March, 1972.

Governor
Presented to the Governor

Date: 3/16/72

Time: 2:10 p.m.

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Office of Secretary of State
State of West Virginia